IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 784 OF 2002

IN

SUIT NO. 936 OF 1992

Shri Ramnath Co-op.Housing Society Ltd. .. Appellant
(Org. Defendants)

Versus

Pradeep Shankar Deshpande ..Respondent
(Orig. Plaintiff)

Mr. K.V.Tembe for appellant.
Mr. Prashant Thatte i/b. Thatte &Co. for Respondent.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE: 23rd October,2007.

P.C.

1. By this Appeal, the appellant challenges the decree passed by a learned Single Judge of this Court in Suit No.936 of 1992 dated 21st March, 1997.

2. Admitted facts are that the respondent-plaintiff who filed Suit No.936 of 1992 praying for a money decree against the present appellant-defendant. Admittedly, the defendant was served with a Writ of Summons. Vakalatnama on his behalf was also filed, but no written statement was filed. When the suit was listed on board as an undefended suit, nobodyappeared for the defendant. As a consequence, the Court decreed the suit by the order dated 21.3.1997. It is also an admitted position that the decree that had been passed against the defendant has also been executed and recovery has been made. It appears that initially, a Notice of Motion was taken out for setting aside the decree, but when it was found that it was not maintainable, this Appeal was filed. The reason that has been given by the appellant for non-filing of written statement that the lawyer he had engaged had left the practice and, therefore, written statement was not filed. Now this allegation cannot be accepted against the lawyer because the lawyer has not been joined as a party. But the factremains that decree has been passed against the appellant without there being a written statement on record. The fact also remains that the decretal amount has already been recovered.

3. The learned Counsel appearing for the appellant

also stated that the appellant is willing to pay costs for delay in filing written statement.

4. Taking overall view of the matter, in order to give the appellant an opportunity to contest the suit, the following order is made to meet the ends of justice :-

(i) The decree and order dated 21st March, 1997 passed in Suit No.936 of 1992 is set aside.

(ii) As a consequence of setting aside the decree, the defendant will not be entitled to recover the amount which is paid by the defendant to the plaintiff under the decree, the amount recovered by the plaintiff pursuant tothe decree shall remain with the plaintiff subject to the result of the suit. It is only in case the suit is dismissed by the Court on trial, the plaintiff will be liable to pay back the amount to the defendant-appellant.

(iii) In case the written statement is filed within six weeks from today by the defendant, it shall be taken on record subject to payment of Rs.5,000/- as costs. The amount of costs shall be paid while serving copy of the written

statement on the plaintiff.

(iv) In case written statement is not filed within the aforesaid period and costs is not paid, this Appeal shall be treated as dismissed.

Appeal disposed of.

--

(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)